
STATUTORY INSTRUMENTS

2004 No. 1861

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 and the Rules of Procedure contained in Schedules 1, 2, 3, 4 and 5 to these Regulations may be referred to, respectively, as —

- (a) the Employment Tribunals Rules of Procedure;
- (b) the Employment Tribunals (National Security) Rules of Procedure;
- (c) the Employment Tribunals (Levy Appeals) Rules of Procedure;
- (d) the Employment Tribunals (Health and Safety – Appeals against Improvement and Prohibition Notices) Rules of Procedure; and
- (e) the Employment Tribunals (Non-Discrimination Notices Appeals) Rules of Procedure.

(2) These Regulations shall come into force on 1 October 2004.

(3) Subject to the savings in regulation 20, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001(1) and the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001(2) are revoked.

Interpretation

2. In these Regulations and in Schedules 1, 2, 3, 4 and 5: —

“ACAS” means the Advisory, Conciliation and Arbitration Service referred to in section 247 of TULR(C)A;

“appointing office holder” means, in England and Wales, the Lord Chancellor, and in Scotland, the Lord President;

“chairman” means the President or a member of the panel of chairmen appointed in accordance with regulation 8(3)(a), or, for the purposes of national security proceedings, a member of the panel referred to in regulation 10 selected in accordance with regulation 11(a), and in relation to particular proceedings it means the chairman to whom the proceedings have been referred by the President, Vice President or a Regional Chairman;

“compromise agreement” means an agreement to refrain from continuing proceedings where the agreement meets the conditions in section 203(3) of the Employment Rights Act;

“constructive dismissal” has the meaning set out in section 95(1)(c) of the Employment Rights Act;

“Disability Discrimination Act” means the Disability Discrimination Act 1995(3);

(1) S.I.2001/1171.
(2) S.I. 2001/1170.
(3) 1995 c. 50.

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000(4);

“Employment Act” means the Employment Act 2002(5);

“Employment Rights Act” means the Employment Rights Act 1996(6);

“Employment Tribunals Act” means the Employment Tribunals Act 1996(7);

“Employment Tribunal Office” means any office which has been established for any area in either England & Wales or Scotland specified by the President and which carries out administrative functions in support of functions being carried out by a tribunal or chairman, and in relation to particular proceedings it is the office notified to the parties in accordance with rule 61(3) of Schedule 1;

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“Equal Pay Act” means the Equal Pay Act 1970(8);

“excluded person” means, in relation to any proceedings, a person who has been excluded from all or part of the proceedings by virtue of:–

- (a) a direction of a Minister of the Crown under rule 54(1)(b) or (c) of Schedule 1, or
- (b) an order of the tribunal under rule 54(2)(a) read with 54(1)(b) or (c) of Schedule 1;

“hearing” means a case management discussion, pre-hearing review, review hearing or Hearing (as those terms are defined in Schedule 1) or a sitting of a chairman or a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawful to enable the chairman or tribunal to reach a decision on any question;

“legally represented” has the meaning set out in rule 38(5) of Schedule 1;

“Lord President” means the Lord President of the Court of Session;

“misconceived” includes having no reasonable prospect of success;

“national security proceedings” means proceedings in relation to which a direction is given under rule 54(1) of Schedule 1, or an order is made under rule 54(2) of that Schedule;

“old (England & Wales) regulations” means the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001;

“old (Scotland) regulations” means the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001;

“panel of chairmen” means a panel referred to in regulation 8(3)(a);

“President” means, in England and Wales, the person appointed or nominated by the Lord Chancellor to discharge for the time being the functions of the President of Employment Tribunals (England and Wales), and, in Scotland, the person appointed or nominated by the Lord President to discharge for the time being the functions of the President of Employment Tribunals (Scotland);

“Race Relations Act” means the Race Relations Act 1976(9);

“Regional Chairman” means a member of the panel of chairmen who has been appointed to the position of Regional Chairman in accordance with regulation 6 or who has been nominated to discharge the functions of a Regional Chairman in accordance with regulation 6;

(4) 2000 c. 7.

(5) 2002 c. 22.

(6) 1996 c. 18.

(7) 1996 c. 17.

(8) 1970 c. 41; section 2A was inserted by the Equal Pay (Amendment) Regulations 1983 (S.I. 1983/1794).

(9) 1976 c. 74.

“Register” means the Register of judgments and written reasons kept in accordance with regulation 17;

“Secretary” means a person for the time being appointed to act as the Secretary of employment tribunals either in England and Wales or in Scotland;

“Sex Discrimination Act” means the Sex Discrimination Act 1975⁽¹⁰⁾;

“special advocate” means a person appointed in accordance with rule 8 of Schedule 2;

“tribunal” means an employment tribunal established in accordance with regulation 5, and in relation to any proceedings means the tribunal to which the proceedings have been referred by the President, Vice President or a Regional Chairman;

“TULR(C)A” means the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹¹⁾;

“Vice President” means a person who has been appointed to the position of Vice President in accordance with regulation 7 or who has been nominated to discharge the functions of the Vice President in accordance with that regulation;

“writing” includes writing delivered by means of electronic communication.

Overriding objective

3.—(1) The overriding objective of these regulations and the rules in Schedules 1, 2, 3, 4 and 5 is to enable tribunals and chairmen to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable: —

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with the case in ways which are proportionate to the complexity or importance of the issues;
- (c) ensuring that it is dealt with expeditiously and fairly; and
- (d) saving expense.

(3) A tribunal or chairman shall seek to give effect to the overriding objective when it or he: —

- (a) exercises any power given to it or him by these regulations or the rules in Schedules 1, 2, 3, 4 and 5; or
- (b) interprets these regulations or any rule in Schedules 1, 2, 3, 4 and 5.

(4) The parties shall assist the tribunal or the chairman to further the overriding objective.

President of Employment Tribunals

4.—(1) There shall be a President of Employment Tribunals (England and Wales), responsible for the administration of justice by tribunals and chairmen in England and Wales, who shall be appointed by the Lord Chancellor and shall be a person described in paragraph (3).

(2) There shall be a President of Employment Tribunals (Scotland), responsible for the administration of justice by tribunals and chairmen in Scotland, who shall be appointed by the Lord President and shall be a person described in paragraph (3).

(3) A President shall be a person: —

- (a) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990⁽¹²⁾;
- (b) being an advocate or solicitor admitted in Scotland of at least seven years standing; or

⁽¹⁰⁾ 1975 c. 65.

⁽¹¹⁾ 1992 c. 52.

⁽¹²⁾ 1990 c. 41.

(c) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years standing.

(4) A President may resign his office by notice in writing to the appointing office holder.

(5) If the appointing office holder is satisfied that the President is incapacitated by infirmity of mind or body from discharging the duties of his office, or the President is adjudged to be bankrupt or makes a composition or arrangement with his creditors, the appointing office holder may revoke his appointment.

(6) The functions of President under these Regulations may, if he is for any reason unable to act or during any vacancy in his office, be discharged by a person nominated for that purpose by the appointing office holder.

Establishment of employment tribunals

5.—(1) Each President shall, in relation to that part of Great Britain for which he has responsibility, from time to time determine the number of tribunals to be established for the purposes of determining proceedings.

(2) The President, a Regional Chairman or the Vice President shall determine, in relation to the area specified in relation to him, at what times and in what places in that area tribunals and chairmen shall sit.

Regional Chairmen

6.—(1) The Lord Chancellor may from time to time appoint Regional Chairmen from the panel of full-time chairmen and each Regional Chairman shall be responsible to the President (England and Wales) for the administration of justice by tribunals and chairmen in the area specified by the President (England and Wales) in relation to him.

(2) The President (England and Wales) or the Regional Chairman for an area may from time to time nominate a member of the panel of full time chairmen to discharge for the time being the functions of the Regional Chairman for that area.

Vice President

7.—(1) The Lord President may from time to time appoint a Vice President from the panel of full time chairmen and the Vice President shall be responsible to the President (Scotland) for the administration of justice by tribunals and chairmen in Scotland.

(2) The President (Scotland) or the Vice President may from time to time nominate a member of the panel of full time chairmen to discharge for the time being the functions of the Vice President.

Panels of members of tribunals – general

8.—(1) There shall be three panels of members of Employment Tribunals (England and Wales), as set out in paragraph (3).

(2) There shall be three panels of members of Employment Tribunals (Scotland), as set out in paragraph (3).

(3) The panels referred to in paragraphs (1) and (2) are:—

(a) a panel of full-time and part-time chairmen appointed by the appointing office holder consisting of persons —

(i) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;

(ii) being an advocate or solicitor admitted in Scotland of at least seven years standing; or

- (iii) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years standing;
 - (b) a panel of persons appointed by the Secretary of State after consultation with such organisations or associations of organisations representative of employees as she sees fit; and
 - (c) a panel of persons appointed by the Secretary of State after consultation with such organisations or associations of organisations representative of employers as she sees fit.
- (4) Members of the panels constituted under these Regulations shall hold and vacate office under the terms of the instrument under which they are appointed but may resign their office by notice in writing, in the case of a member of the panel of chairmen, to the appointing office holder and, in any other case, to the Secretary of State; and any such member who ceases to hold office shall be eligible for reappointment.
- (5) The President may establish further specialist panels of chairmen and persons referred to in paragraphs (3)(b) and (c) and may select persons from such specialist panels in order to deal with proceedings in which particular specialist knowledge would be beneficial.

Composition of tribunals - general

9.—(1) For each hearing, the President, Vice President or the Regional Chairman shall select a chairman, who shall, subject to regulation 11, be a member of the panel of chairmen, and the President, Vice President or the Regional Chairman may select himself.

(2) In any proceedings which are to be determined by a tribunal comprising a chairman and two other members, the President, Regional Chairman or Vice President shall, subject to regulation 11, select one of those other members from the panel of persons appointed by the Secretary of State under regulation 8(3)(b) and the other from the panel of persons appointed under regulation 8(3)(c).

(3) In any proceedings which are to be determined by a tribunal whose composition is described in paragraph (2) or, as the case may be, regulation 11(b), those proceedings may, with the consent of the parties, be heard and determined in the absence of any one member other than the chairman.

(4) The President, Vice President, or a Regional Chairman may at any time select from the appropriate panel another person in substitution for the chairman or other member of the tribunal previously selected to hear any proceedings before a tribunal or chairman.

Panels of members of tribunals – national security proceedings

10. In relation to national security proceedings, the President shall:—

- (a) select a panel of persons from the panel of chairmen to act as chairmen in such cases; and
- (b) select:—
 - (i) a panel of persons from the panel referred to in regulation 8(3)(b) as persons suitable to act as members in such cases; and
 - (ii) a panel of persons from the panel referred to in regulation 8(3)(c) as persons suitable to act as members in such cases.

Composition of tribunals – national security proceedings

11. In relation to national security proceedings:—

- (a) the President, the Regional Chairman or the Vice President shall select a chairman, who shall be a member of the panel selected in accordance with regulation 10(a), and the President, Regional Chairman or Vice President may select himself; and

- (b) in any such proceedings which are to be determined by a tribunal comprising a chairman and two other members, the President, Regional Chairman or Vice President shall select one of those other members from the panel selected in accordance with regulation 10(b)(i) and the other from the panel selected in accordance with regulation 10(b)(ii).

Modification of section 4 of the Employment Tribunals Act (national security proceedings)

12.—(1) For the purposes of national security proceedings section 4 of the Employment Tribunals Act shall be modified as follows.

(2) In section 4(1)(a), for the words “in accordance with regulations made under section 1(1)” substitute the words “in accordance with regulation 11(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004”.

(3) In section 4(1)(b), for the words “in accordance with regulations so made” substitute the words “in accordance with regulation 11(b) of those Regulations”.

(4) In section 4(5), for the words “in accordance with Regulations made under section 1(1)” substitute the words “in accordance with regulation 10(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004”.

Practice directions

13.—(1) The President may make practice directions about the procedure of employment tribunals in the area for which he is responsible, including practice directions about the exercise by tribunals or chairmen of powers under these Regulations or the Schedules to them.

- (2) The power of the President to make practice directions under paragraph (1) includes power:—
- (a) to vary or revoke practice directions;
 - (b) to make different provision for different cases or different areas, including different provision for specific types of proceedings.

(3) The President shall publish a practice direction made under paragraph (1), and any revocation or variation of it, in such manner as he considers appropriate for bringing it to the attention of the persons to whom it is addressed.

Power to prescribe

14.—(1) The Secretary of State may prescribe —

- (a) one or more versions of a form, one of which shall be used by all claimants for the purpose of commencing proceedings in an employment tribunal (“claim form”) except any claim or proceedings listed in paragraph (3);
- (b) one or more versions of a form, one of which shall be used by all respondents to a claim for the purpose of responding to a claim before an employment tribunal (“response form”) except respondents to a claim or proceedings listed in paragraph (3); and
- (c) that the provision of certain information and answering of certain questions in a claim form or in a response form is mandatory in all proceedings save those listed in paragraph (3).

(2) The Secretary of State shall publish the forms and matters prescribed pursuant to paragraph (1) in such manner as she considers appropriate in order to bring them to the attention of potential claimants, respondents and their advisers.

- (3) The proceedings referred to in paragraph (1) are:—
- (a) those referred to an employment tribunal by a court;
 - (b) proceedings to which any of Schedules 3 to 5 apply; or

- (c) proceedings brought under any of the following enactments:—
- (i) sections 19, 20 or 22 of the National Minimum Wage Act 1998⁽¹³⁾;
 - (ii) section 11 of the Employment Rights Act where the proceedings are brought by the employer.

Calculation of time limits

15.—(1) Any period of time for doing any act required or permitted to be done under any of the rules in Schedules 1, 2, 3, 4 and 5, or under any decision, order or judgment of a tribunal or a chairman, shall be calculated in accordance with paragraphs (2) to (6).

(2) Where any act must or may be done within a certain number of days of or from an event, the date of that event shall not be included in the calculation. For example, a respondent is sent a copy of a claim on 1st October. He must present a response to the Employment Tribunal Office within 28 days of the date on which he was sent the copy. The last day for presentation of the response is 29th October.

(3) Where any act must or may be done not less than a certain number of days before or after an event, the date of that event shall not be included in the calculation. For example, if a party wishes to submit representations in writing for consideration by a tribunal at a hearing, he must submit them not less than 7 days before the hearing. If the hearing is fixed for 8th October, the representations must be submitted no later than 1st October.

(4) Where the tribunal or a chairman gives any decision, order or judgment which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(5) In rule 14(4) of Schedule 1 the requirement to send the notice of hearing to the parties not less than 14 days before the date fixed for the hearing shall not be construed as a requirement for service of the notice to have been effected not less than 14 days before the hearing date, but as a requirement for the notice to have been placed in the post not less than 14 days before that date. For example, a hearing is fixed for 15th October. The last day on which the notice may be placed in the post is 1st October.

(6) Where any act must or may have been done within a certain number of days of a document being sent to a person by the Secretary, the date when the document was sent shall, unless the contrary is proved, be regarded as the date on the letter from the Secretary which accompanied the document. For example, a respondent must present his response to a claim to the Employment Tribunal Office within 28 days on the date of which he was sent a copy of the claim. If the letter from the Secretary sending him a copy of the claim is dated 1st October, the last day for presentation of the response is 29th October.

Application of Schedules 1-5 to proceedings

16.—(1) Subject to paragraphs (2) and (3), the rules in Schedule 1 shall apply in relation to all proceedings before an employment tribunal except where separate rules of procedure made under the provisions of any enactment are applicable.

(2) In proceedings to which the rules in Schedule 1 apply and in which any power conferred on the Minister, the tribunal or a chairman by rule 54 (national security proceedings) of Schedule 1 is exercised, Schedule 1 shall be modified in accordance with Schedule 2.

(3) The rules in Schedules 3, 4 and 5 shall apply to modify the rules in Schedule 1 in relation to proceedings which consist, respectively, in:—

(13) 1998 c. 39.

- (a) an appeal by a person assessed to levy imposed under a levy order made under section 12 of the Industrial Training Act 1982⁽¹⁴⁾;
- (b) an appeal against an improvement or prohibition notice under section 24 of the Health and Safety at Work etc Act 1974; and
- (c) an appeal against a non-discrimination notice under section 68 of the Sex Discrimination Act, section 59 of the Race Relations Act or paragraph 10 of Schedule 3 to the Disability Rights Commission Act 1999⁽¹⁵⁾.

Register

17.—(1) The Secretary shall maintain a Register which shall be open to the inspection of any person without charge at all reasonable hours.

(2) The Register shall contain a copy of all judgments and any written reasons issued by any tribunal or chairman which are required to be entered in the Register in accordance with the rules in Schedules 1 to 5.

(3) The Register, or any part of it, may be kept by means of a computer.

Proof of decisions of tribunals

18. The production in any proceedings in any court of a document purporting to be certified by the Secretary to be a true copy of an entry of a judgment in the Register shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

Jurisdiction of tribunals in Scotland and in England & Wales

19.—(1) An employment tribunal in England or Wales shall only have jurisdiction to deal with proceedings (referred to as “English and Welsh proceedings”) where —

- (a) the respondent or one of the respondents resides or carries on business in England and Wales;
- (b) had the remedy been by way of action in the county court, the cause of action would have arisen wholly or partly in England and Wales;
- (c) the proceedings are to determine a question which has been referred to the tribunal by a court in England and Wales; or
- (d) in the case of proceedings to which Schedule 3, 4 or 5 applies, the proceedings relate to matters arising in England and Wales.

(2) An employment tribunal in Scotland shall only have jurisdiction to deal with proceedings (referred to as “Scottish proceedings”) where —

- (a) the respondent or one of the respondents resides or carries on business in Scotland;
- (b) the proceedings relate to a contract of employment the place of execution or performance of which is in Scotland;
- (c) the proceedings are to determine a question which has been referred to the tribunal by a sheriff in Scotland; or
- (d) in the case of proceedings to which Schedule 3, 4 or 5 applies, the proceedings relate to matters arising in Scotland.

(14) 1982 c. 10.

(15) 1999 c. 17.

Transitional provisions

20.—(1) These Regulations and Schedules 1 to 5 to them shall apply in relation to all proceedings to which they relate where those proceedings were commenced on or after 1 October 2004.

(2) These Regulations and Schedules 1 and 2 to them (with the exception of rules 1 to 3 and 38 to 48 of Schedule 1) shall apply to proceedings:—

- (a) which were commenced prior to 1 October 2004; and
- (b) to which Schedule 1 to either the old (England & Wales) regulations or the old (Scotland) regulations applied;

provided that a copy of the originating application was not sent to the respondent prior to 1 October 2004.

(3) In relation to the proceedings described in paragraph (2), the following provisions of Schedule 1 to the old (England & Wales) regulations or the old (Scotland) regulations (as the case may be) shall continue to apply:—

- (a) rule 1 (originating application);
- (b) rule 2 (action upon receipt of originating application) with the exception of paragraphs (2), (4) and (5) of that rule; and
- (c) rule 14 (costs).

(4) In relation to proceedings described in paragraph (2) but where a copy of the originating application was sent to the respondent prior to 1 October 2004, Schedules 1 and 2 to these Regulations shall apply with the exception of rules 1 to 9, 21 to 24, 33 and 38 to 48 of Schedule 1 and rules 2, 3 and 4 of Schedule 2.

(5) In relation to proceedings described in paragraph (4), the following provisions of the old (England & Wales) regulations or the old (Scotland) regulations (as the case may be) shall continue to apply:—

- (a) in Schedule 1:—
 - (i) rule 1 (originating application);
 - (ii) rule 2 (action upon receipt of originating application) with the exception of paragraphs (2), (4) and (5) of that rule;
 - (iii) rule 3 (appearance by respondent);
 - (iv) rule 8 (national security);
 - (v) rule 14 (costs); and
- (b) rule 1 of Schedule 2.

(6) In relation to proceedings commenced prior to 1 October 2004 and to which Schedule 4, 5 or 6 to the old (England & Wales) regulations or the old (Scotland) regulations (as the case may be) applied, the provisions of those schedules shall continue to apply to such proceedings.

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19th July 2004